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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. ~~265~~ 27

GLADYS BODDIE, et al.,

Appellants,

vs.

THE STATE OF CONNECTICUT, et al.,

Appellees.

On Appeal From The United States District Court For The District Of Connecticut

BRIEF OF THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION AS AMICUS CURIAE

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Appellees.

On Appeal From The United States District Court For The District Of Connecticut

BRIEF OF THE NATIONAL LEGAL AID AND DEFENDER ASSOCIATION AS AMICUS CURIAE

The National Legal Aid and Defender Association files this Brief Amicus Curiae pursuant to the written consent of the parties submitted herewith.

INTEREST OF AMICUS CURIAE.

The National Legal Aid and Defender Association, hereinafter called NLADA, is a non-profit corporation

whose primary purpose is to assist in providing more and better legal services for the poor. Its members include the great majority of defender offices, coordinated assigned counsel systems, and legal aid societies in the United States. NLADA also has 1600 professional members, many of whom are practicing attorneys who represent indigent persons in criminal and civil matters.

NLADA and its members believe that each citizen, regardless of his social or economic status, is entitled to equal justice under law. In the case at bar, a United States District Court for the District of Connecticut (see text *infra* at 6) has upheld the State of Connecticut's fee and cost requirements as preconditions for initiating a divorce action. It is our contention that such a practice violates the constitutional rights of those too poor to pay.

The entire issue is of vital concern to members of NLADA, many of whom represent indigents in a variety of civil matters, including divorce actions. See Appendix B *infra*. NLADA urges a reversal of the judgment of the United States District Court for the District of Connecticut because we believe that an individual's meaningful right to gain initial access to a state's judicial forum is at the core of our system of justice. Providing legal representation for the poor is superfluous if the poor are not permitted to get into court.

In view of the direct importance of this case to legal aid attorneys serving the poor throughout the country, and to the poor themselves, the Executive Committee of NLADA has authorized and instructed NLADA's staff to prepare and file an amicus brief in this case.

OPINION BELOW.

Judgment of a three-judge United States District Court for the District of Connecticut entered July 17, 1968, denied an injunction which sought to restrain the enforcement of a state statute. The opinion of the three-judge District Court for the District of Connecticut is reported in 286 F. Supp. 968.

JURISDICTION.

The jurisdiction of this Court to review by appeal the judgment of the three-judge United States District Court for the District of Connecticut is conferred by 28 U.S.C. 1253. Probable jurisdiction was noted on June 23, 1969.

STATUTORY PROVISION INVOLVED.

Sec. 52-259 of the General Statutes of Connecticut as amended by Pub. Act 628, Sec. 3 (Conn. Gen. Stat. Ann., Vol. 25, 1967, Supp., p. 29):

Sec. 52-259 Court fees

"There shall be paid to the clerks of the supreme court or the superior court, for entering each civil

cause, forty-five dollars, and to the clerks of the court of common pleas for entering each civil cause, thirty dollars. There shall be paid to the clerk of each court, other than probate courts, by any party who requests a finding of fact by a judge of such court to be used on appeal, the sum of twenty dollars, to be paid at the time the request is filed. Such clerks shall also receive for receiving and filing an assessment of damages by appraisers of land taken for public use or the appointment of a commissioner of the superior court, two dollars; for recording the commission and oath of a notary public or certifying under seal to the official character of any magistrate, two dollars; for certifying under seal in verification of copies of files or records or whenever required by law, two dollars; for making all necessary records and certificates of naturalization, the fees allowed under the provisions of the United States statutes for such services; and for making copies, at the rate of fifty cents a page, except there shall be no charge for one plain or certified copy of a judgment to any party to the action.

QUESTION PRESENTED.

Does the State of Connecticut's refusal to waive court fees and costs for indigent persons deny these persons access to Connecticut's courts in violation of the Fourteenth Amendment to the United States Constitution?

STATEMENT OF THE CASE.

The NLADA adopts Appellants' Statement.

SUMMARY OF ARGUMENT.

The Fourteenth Amendment equal protection guarantee requires procedures by the state that do not permit discrimination between persons on the basis of their ability to bear the costs of litigation. In addition, the Fourteenth Amendment requires that no state "deprive any person of life, liberty, or property without due process of law." Connecticut has, by requiring that the poor pay filing fees and court costs in divorce actions, created two classes of prospective suitors—one class able to pay the necessary fees and costs and another class unable to do so because of their poverty. The practical effect of Connecticut's fee statute (Conn. Gen. Stat. Ann. Sec. 52-259), as applied to these appellants, is to bar them from Connecticut's divorce courts and to deny them the opportunity to secure a divorce solely because of their poverty. The Equal Protection Clause prohibits a classification that permits a man of means to gain access to a state court while denying the same opportunity to an indigent person. Similarly, an arbitrary denial of the right to terminate a marriage constitutes an extreme example of injustice that amounts to a serious deprivation of liberty within the meaning of the Due Process Clause.

ARGUMENT.

I.

THE STATE OF CONNECTICUT'S REFUSAL TO WAIVE COURT FEES AND COSTS FOR INDIGENT PERSONS WHO WISH TO INITIATE AN ACTION FOR DIVORCE EFFECTIVELY DENIES THESE PERSONS ACCESS TO CONNECTICUT'S COURTS IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

A.

The Equal Protection Clause Requires that Persons Should Not Be Denied Access to State Courts Because of Their Poverty.

1. Connecticut's Filing Fees and Court Costs Represent a Serious Financial Obstacle to Poor Persons Who Seek Access to the State's Courts.

The State of Connecticut requires that persons who wish to prosecute an action for divorce pay an "entry" (or filing) fee of forty-five dollars. *See* Conn. Gen. Stat. Ann. Sec. 52-259 as amended by Pub. Act 628, Sec. 3 (1967). In addition to this statutory filing fee, costs and expenses incident to a divorce proceeding in Connecticut include either the cost of service by sheriff (from "ten to fifteen dollars") or by publication ("one hundred dollars"). *See* brief for Plaintiff, p. 6, *Boddie, et al.* v. *Conn., et al.,* 286 F. Supp. 968 (D. Conn. 1968), and opinion of the three-judge federal District Court at 970. These fees and costs represent a serious financial obstable to the poor who wish to gain initial access to Connecticut's divorce courts.

In the case presently before this Court, all of appellants' applications to initiate divorce proceedings without payment of filing or service fees were rejected by the appellees. Connecticut has no statute permitting indigent persons to proceed *in forma pauperis* in civil actions.* The practical effect of Connecticut's refusal to waive filing and service fees, absent an *in forma pauperis* proceeding, is to deny indigent persons initial access to the courts and the right to seek a divorce.

2. Access to State Courts Is a Right of Fundamental Importance that Must Be Made Available to All Citizens Equally.

The Equal Protection Clause requires that Connecticut make available its courts to all citizens on an equal basis. Equal access does not exist where persons are denied access to Connecticut's courts because of their poverty. As early as 1885, this Court expressed its concern that ". . . equal protection and security . . . be given to all under like circumstances in the enjoyment of their personal and civil rights . . . [and] that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts . . ." *Barbier* v. *Connolly,* 113 U.S. 27, 31 (1885). The guaranty of equal protection requires that ". . . all litigants similarly situated may appeal to the courts for relief under like conditions and without discrimination."

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* Twenty eight states permit indigent plaintiffs to proceed *in forma pauperis* in divorce actions. See Appendix A *infra.* In addition, a federal statute, 28 U.S.C. §1915 (1964), authorizes federal courts to allow civil litigants, as well as criminal appellants, to proceed *in forma pauperis* if they are ". . . unable to pay . . . costs or give security therefor."

Republic Pictures Corp. v. *Kappler,* 151 F. 2d 543, 547 (8th Cir. 1945), *affirmed* 327 U.S. 757 (1945).

In 1956, this Court held that an Illinois appellate scheme, wherein "full direct appellate review" could be had as a practical matter only if the defendant-appellant provided a trial transcript at his own expense, violated the Equal Protection Clause as to an indigent defendant by denying him the appeal that a wealthy litigant could afford. *Griffin* v. *Illinois,* 351 U.S. 12 (1956). This Court declared in *Griffin* that:

> "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy a transcript." *Id.* at 19.

Similarly, this Court has made it clear that the Equal Protection Clause requires that if a state provides an appeal to some it cannot deny it to others because of their inability to pay, even where such a denial can be rationally defended. *See Douglas* v. *California,* 372 U.S. 353 (1963).

The thrust of *Griffin* and *Douglas* is that the equal protection guaranty calls for procedures by the state that do not permit discrimination between persons on the basis of their ability to bear the costs of litigation. What is more, *Griffin* and *Douglas* make no distinction between intentional and unintentional forms of state discrimination. Rather, these two cases stand for the proposition that if a state perpetuates unintentional and accidental inequality affecting important rights of the poor, such action would be treated no differently, for purposes of the Equal Protection Clause, than any other kind of

premeditated and invidious discrimination. *See also Jeffreys* v. *Jeffreys*, 57 Misc. 2d 416, 296 N.Y.S. 2d 74, 85 (1968).

Connecticut has, by requiring that the poor pay filing fees and court costs, created two classes of prospective suitors—one class able to pay the necessary fees and costs, and the other class unable to do so because of their poverty. The ability of people to pay should never be the basis of a classification. In 1949, Joseph Tussman and Jacobus tenBroek recognized that:

> "The assertion of human equality is closely associated with the denial that differences in color or creed, birth or status, are significant or relevant to the way in which men should be treated . . . To these differences in the supplicants before her bar, Justice must be blind. Laws which classify men by color or creed or blood accordingly, are repugnant to the demand for equality, and therefore, such traits should not be made the basis for the classification of individuals in laws." Tussman and tenBroek, "The Equal Protection of the Laws." 37 *Calif. L. Rev.* 341, 353 (1949).

This Court has already recognized that laws which classify criminal defendants on the basis of wealth are "repugnant to the demand for equality" and that the ability of indigent defendants to pay should not be made the basis for a classification. *See* e.g. *Griffin* and *Douglas*, *supra*. What remains is for this Court to pronounce in clear and forthright language that equality is denied when classifications, based on the ability of persons to pay, are permitted to foreclose citizens from certain fundamental rights such as access to a state's divorce courts and the opportunity to secure a divorce. The practical effect of Connecticut's fee statute, as applied to

these appellants, is to bar them from Connecticut's divorce courts and to deny them the opportunity to secure a divorce solely because of their poverty.

3. Equal Protection Guaranties Apply to Civil Litigants as well as Criminal Defendants.

Nearly all of the relevant decisions from this Court applying the equal protection rationale of *Griffin* and *Douglas* afford specific relief from the handicap of indigence for criminal defendants. This should not serve to limit the application of the Equal Protection Clause to criminal cases. *See* e.g. *Eskridge* v. *Washington,* 357 U.S. 214 (1958), *Burns* v. *Ohio,* 360 U.S. 252 (1959) and *Smith* v. *Bennett,* 365 U.S. 708 (1961). See Argument II *infra* for a more detailed analysis of the possible application of the Equal Protection Clause in civil cases. ". . . [the] actual concerns of the poor do not reflect the law's sharp distinction between civil and criminal litigants." Note, "Indigent's Right to Counsel in Civil Cases," 76 *Yale L. J.* 545 (1967).

The "distinction" that has arisen between civil and criminal cases, for purposes of applying equal protection guaranties, might be attributed to the fact that until recently indigents rarely were found in civil courts. In most civil suits the traditional remedy sought was a money judgment, and indigents were not logical defendants in such suits. Also, indigents rarely resorted to the courts as plaintiffs because of both the expense of litigation and an unfamiliarity with the means of vindicating their rights. *See* Address by Attorney General Robert F. Kennedy, University of Chicago Law School, Law Day Address, May 1, 1964, quoted in Cahn & Cahn. "The War on Poverty: A Civilian Perspective," 73 *Yale L. J.* 1317, 1336-37, n. 27 (1964). *See* also Silverstein,

Defense of the Poor in American State Courts (1965). Perhaps another reason for the distinction drawn between the rights of indigent defendants and indigent civil litigants (particularly indigent plaintiffs) may be attributed to the belief, shared by many, that criminal cases, in which the state is always a party, present more compelling constitutional issues. *See* e.g. *Griffin* v. *Illinois*, *supra* at 23.

Whatever factors contributed toward fostering this distinction between civil and criminal litigants must, however, be held suspect today. Indigents, assisted by legal aid attorneys and *in forma pauperis* statutes, no longer shun civil litigation. The rights and interests involved in civil litigation are, in many instances, no less important than those involved in criminal litigation. *See* e.g. Appendix B *infra*, indicating the large volume of civil cases handled by legal aid attorneys. Indeed, the state often has a significant interest in the civil action.

For example, poor persons may arbitrarily be evicted from public housing, have their welfare payments cut off, or their children taken from them. They may even lose their liberty through civil commitment to a mental institution. *See* Note, "Indigent's Right to Counsel in Civil Cases," *supra* at 545. Conversely, poor persons may have vital interests that they can realize only as plaintiffs in a civil action. They may be able to suspend rent payments for housing code violations, protect their privacy and security against the arbitrary actions of welfare officials, or get a divorce, separation, support, or custody decree. *Id.* at 545, 546. It follows, therefore, that the principles of equal treatment for indigent and non-indigent persons enunciated in *Griffin* and its progeny must have equal application and importance in the case presently before this Court.

4. Divorce in Connecticut Clearly Is Marked with the Requisite State Interest.

There is little doubt that marriage and divorce in Connecticut are clearly marked with the public interest. The marriage relationship is closely regulated by the State both in its inception and dissolution. *See* e.g. Conn. Gen. Stat. Ann. Tit. 46. *See also Jeffreys* v. *Jeffreys*, *supra* at 87. Connecticut imposes substantial duties and confers substantial rights upon the parties to this relationship. One such right is to have the relationship terminated upon certain conditions. However, this "right" to have a marriage terminated can only occur with the consent of the state "for causes deemed to make probable the better service of the interests of society thereby." *Allen* v. *Allen*, 46 A. 242, 73 Conn. 54 (1900).

In Connecticut, a marriage cannot be dissolved except by resort to the State's courts. *See* Conn. Gen. Stat. Ann. Sec. 46-13, conferring exclusive jurisdiction of all divorce complaints in the superior courts of the State. It is abundantly clear that Connecticut has always regarded itself as an interested third party in every marriage and divorce action. Nevertheless, Connecticut has, by the application of its statutes (*see* Conn. Gen. Stat. Sec. 52-259) and by upholding the right of its courts and judicial officers to require additional fees in conjunction with a divorce action, created arbitrary and unjustified monetary hurdles for indigent persons who wish to secure a divorce.

5. Loss of Access to Connecticut's Divorce Courts Deprives Poor People of the Right to Seek a Divorce.

The loss of access to Connecticut's divorce courts (superior courts) is a denial of a right of substantial

magnitude. This denial is even more unpalatable because an individual may obtain the desired redress or relief only through these courts. To deny appellants access to Connecticut's divorce courts simply because they are unable to bear the costs of litigation is to deny them the substantive right to a divorce and thereby to create a discrimination for which there can be no justification. The decision of the three-judge federal district court, from which this appeal is taken, conceded that the appellants are effectively barred from bringing suit by requiring them to pay a filing fee and other incidental court costs. *See Boddie, et al.* v. *Conn., et al., supra* at 972. The court noted that ". . . it is plain that there is in effect a classification of prospective civil suitors between those able to afford the court costs and those unable to afford them." *Ibid.* However, the court refused to accept the notion that the right of access to civil courts to adjudicate one's marital status is "a right of great importance" comparable to those kinds of rights guaranteed by the Equal Protection Clause as enunciated in *Griffin. Ibid.*

It is hard to visualize a more sweeping deprivation of personal liberty and individual rights than Connecticut's effective foreclosure of the poor from uninhibited access to the State's divorce courts. The right of access to Connecticut's divorce courts and the right to seek a divorce are as basic as the right to appeal enunciated in *Griffin* or the right to vote expounded in *Harper* v. *Virginia State Board of Elections,* 383 U.S. 663 (1966). See *Jeffreys* v. *Jeffreys, supra* at 87. It is manifestly discriminatory under *Griffin* standards to deprive the appellants of such rights while affording them to persons who have the money to pay the necessary fees and costs.

6. Connecticut Has No Legitimate Competing Interest to Support Distinctions Among Civil Suitors on the Basis of Wealth.

Connecticut has no legitimate competing interest to support a classification of prospective civil suitors that effectively bars poor suitors from her divorce courts. The classification neither promotes a "compelling" state interest, *see Shapiro* v. *Thompson, Washington* v. *Legrant*, and *Reynolds* v. *Smith*, ... U.S. ....., 89 S. Ct. 1322 (1969), nor a legitimate governmental objective. *See* e.g. *Rapid Transit Corp.* v. *City of New York*, 303 U.S. 573, 578 (1938).

Only two state interests are served by requiring prospective litigants to pay for the right to use Connecticut's divorce courts—to provide "financial support for the court establishment . . . and [to discourage] resort to litigation in purely frivolous matters . . ." *See Boddie, et al.* v. *Conn., et al., supra* at 973. The three-judge federal district court addressed itself to Connecticut's revenue interest and noted that fees and costs support "perhap one-fifth" of Connecticut's court establishment. *Ibid.* This percentage appears to encompass revenues produced by fees and costs assessed in all civil actions and not simply those produced from fees and costs assessed incidental to divorce actions. Connecticut's reliance upon court fees and costs also is surprising in light of an American Bar Foundation study on systems of paying the cost of litigation that concluded "fees charged to litigants do not produce nearly enough revenue to operate the federal and state courts, [but] are so high as to constitute a substantial deterrent to the poor litigant if he must pay these expenses himself." *See* Silverstein, *Public Provisions for Costs and Expenses of Civil Litigation* 2-3 (1966).

Connecticut's economic interest in divorce actions probably is negligible, but even a small increase in Connecticut's general tax burden that might be necessitated by the State opening its divorce courts to the poor can hardly justify denying poor litigants initial access to the State's divorce courts. Also, requiring Connecticut to waive its fees and costs incidental to divorce actions "creates no remedy problems," for its court ". . . without legislative cooperation has the power both to enjoin the collection of a fee and to grant access to its forum." *See* Note, "Discriminations Against the Poor and the Fourteenth Amendment," 81 *Harv. L. Rev.* 435, 451 (1967).

We do not deny that Connecticut has a legitimate state interest in discouraging and perhaps deterring frivolous litigation. But denying access to state courts to those unable to pay the required costs and fees involved in divorce litigation excludes meritorious and frivolous claims alike. The situation is analogous to the one in *Douglas, supra,* where this Court concluded that, although California was pursuing the otherwise lawful objective of providing counsel for an appeal only for non-frivolous claims, it had created a situation in which the well-to-do could always have a lawyer—even for frivolous appeals —whereas the indigent could not. Similarly, in the case presently before this Court, although Connecticut may be pursuing the otherwise legitimate objective of trying to discourage frivolous litigation, it has, in effect, created a situation wherein those who can pay the necessary court costs and fees can always initiate an action for divorce—even a frivolous one—whereas the indigent cannot.

Griffin required non-discriminatory treatment with respect to satisfying what it took to be the interest really at stake—that of actually being able to acquire a transcript in order to bring an effective appeal. In the case presently before this Court the interest at stake is the right of all persons to have initial access to Connecticut's divorce courts and the opportunity to secure a divorce. Although Connecticut has not declared that an indigent person cannot initiate an action for divorce, it has, like Illinois (*Griffin*) and California (*Douglas*), ignored private inequalities of wealth in classifying prospective litigants.

7. The Constitution Prohibits Connecticut from Erecting Economic Barriers that Bar Poor Persons from an Initial Hearing on the Merits.

The economic barrier erected by Connecticut to its divorce courts arguably is a more invidious discrimination against the poor than the denial of a right to bring an effective appeal or even the failure to provide the poor with counsel. Here excessive court fees and costs prevent these appellants from having even a first hearing on the merits of their case. The effective result of such a policy is to deny indigent persons equal protection of the law by denying them access to Connecticut's divorce courts and the right to seek a divorce solely because of their poverty. *Griffin* acknowledges that laws or procedures that have the effect of discriminating against indigent persons (even if they appear to be neutral on their face) and that deny indigent persons equal protection of the laws are unconstitutional.

By requiring its citizens to post filing fees and pay certain court costs in order to gain access to its divorce courts, Connecticut is treating those who cannot meet

these financial requirements as second-class citizens. A state that provides justice through a system of courts and permits relief only through its courts cannot condition that grant upon the ability to pay of those who are intended to benefit from it. If ". . . it is now fundamental that, once established [avenues of appellate review] . . . must be kept free of unreasoned distinctions that can only impede open and equal access to the courts," *Williams* v. *Oklahoma City*, ... U.S. ....., 89 S. Ct. 1818, 1819 (1969), it follows that no hindrance or obstruction can impede a citizen's access to the courts for the purpose of obtaining an initial hearing on the merits. Connecticut's refusal in this case to waive the filing fees required by Conn. Gen. Stat. Ann. Sec. 52-259 and the other court costs incidental to an action for divorce and its refusal to permit the appellants to proceed *in forma pauperis* clearly resulted in a denial of access to Connecticut's divorce courts—a discrimination against the appellants based solely upon their poverty.

It is our contention that the constitutional guaranty of equal protection of the laws is not subject to a construction that allows a man of means to gain access to a state court while denying the same opportunity to the indigent. We agree with Mr. Justice Douglas that ". . . the promise of equal justice for all would be an empty phrase for the poor if the ability to obtain judicial relief were made to turn on the length of a person's purse." *Williams* v. *Shaffer*, 385 U.S. 1037 (1967) (Douglas, J., dissenting from denial of *certiorari*). Equal protection of the laws should not embrace procedures whereby access to the courts is made contingent upon an individual's ability to pay. Our state courts must be open to all—rich and poor alike.

B.

Due Process Requires that Poor Persons Be Guaranteed Access to a State's Divorce Court.

1. The Fourteenth Amendment Proscribes State Action that Deprives a Class of Citizens of Their Rights to Life, Liberty, and Property without Due Process of Law.

The Fourteenth Amendment requires that no state "deprive any person of life, liberty, or property without due process of law." U.S. Const., XIV Amendment, Sec. 1. The phrase "due process of law" has never been defined precisely by this Court perhaps because "due process of law conveys neither formal nor fixed nor narrow requirements." *See* Mr. Justice Frankfurter in *Wolf* v. *Colorado*, 338 U.S. 25, 27 (1949). In *Wolf*, Mr. Justice Frankfurter went on to observe that due process,

> ". . . is the compendious expression for all those rights which the courts must enforce because they are basic to our free society . . .
>
> "To rely on a tidy formula for the easy determination of what is a fundamental right for purposes of legal enforcement may satisfy a longing for certainty but ignores the movements of a free society. It belittles the scale of the conception of due process. The real clue to the problem confronting the judiciary in the application of the Due Process Clause is not to ask where the line is once and for all to be drawn but to recognize that it is for the Court to draw it by the gradual and empiric process of 'inclusion and exclusion.'" *Ibid.*

More recently this Court defined due process of law as ". . . the primary and indispensable foundation of individual freedom . . . the basic and essential term in the social compact which defines the rights of the individual

and delimits the power which the state may exercise." *In re Gault,* 387 U.S. 1, 20 (1967). It is our contention that the Due Process Clause requires that all litigants, rich and poor alike, have equal access to state courts to vindicate their legal rights and that to deny appellants an opportunity to gain access to a legal forum amounts to a violation of a ". . . principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *See Palko* v. *Conn.,* 302 U.S. 319, 325 (1937).

There is no evidence to indicate that either the framers of the Fourteenth Amendment or this Court intended that initial access to state courts be conditioned upon an individual's social or economic status. On the other hand, there is a great deal of evidence to support the contention that the right of initial access to our nation's courts is deemed fundamental to life, liberty, and property and is protected by the Due Process Clause of the Fourteenth Amendment.

In 1883, this Court observed that ". . . any legal proceeding enforced by public authority, whether sanctioned by age and custom, or newly devised in the discretion of the legislative power, in furtherance of the general public good . . . must be held to be due process of law." *Hurtado* v. *California,* 110 U.S. 516, 537 (1883). Almost fifty years later this Court acknowledged the principle in *McKane* v. *Durston,* 153 U.S. 684 (1894), that the right to appeal *per se* is not essential to due process, "provided that due process has already been accorded in the tribunal of first instance." *See Ohio* v. *Akron Park District,* 281 U.S. 74, 80 (1929). The Court went on to say in *Ohio* v. *Akron Park District* that "The opportunity afforded to litigants in Ohio to contest all constitutional

and other questions fully in the Common Pleas Court . . . plainly satisfied the requirements of the Federal Constitution in this respect. . . ." *Ibid.*

Clearly the implications of the Court's language in *Hurtado* and *Ohio* v. *Akron Park District* is that no legal proceeding, or no opportunity to contest, is less than due process of law. Recent decisions of this Court reaffirm that an opportunity for hearing, or an opportunity to contest constitutional issues, are fundamental requisites of due process in civil litigation. *See* e.g. *Schroeder* v. *New York*, 371 U.S. 208 (1962). Due process requires that the poor not be deprived of all recourse to the courts. Their status as litigants, either as plaintiffs or defendants in civil actions, should make no difference in the application of the due process guaranty. *See* Recent Developments, "Poverty and Equal Access to the Courts: The Constitutionality of Summary Dispossess in Georgia," 20 *Stan. L. Rev.* 766, 780 (1966).

Connecticut's Constitution and courts would seem to be in agreement. Article I, Section 10, of the Connecticut Constitution provides:

> "All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and rights and justice administered without sale, denial or delay."

A Connecticut court has construed this provision to mean that "it is the essence of the constitutional intention that the courts created in the constitution should be open and accessible to the people who may have occasion to seek their protection . . . and the general assembly has no power to forbid any person from entrance thereto." *Osborn* v. *Zoning Board of Appeals of City of Stan-*

ford, 11 Conn. Supp. 489 (1943). When read in conjunction with Connecticut's own constitutional guarantees that "no person shall be . . . deprived of life, liberty or property without due process of law" (*see* Connecticut Const. Art. I, Sec. 8), the State's failure to waive fee and cost requirements in this case amounts to nothing less than a denial of rights guaranteed to Connecticut's citizens under Article I, Section 10, *supra.* It also amounts to a deprivation by the State of Connecticut of life, liberty, and property within the meaning of the Due Process Clause of its own constitution, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

2. Rights Protected by the Fourteenth Amendment Guaranty of Due Process Are Not Confined to the Specific Terms of the Bill of Rights.

The term "liberty" as used in the Fifth and Fourteenth Amendments to the United States Constitution has been interpreted to ". . . [denote] not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." *Meyer* v. *Nebraska,* 262 U.S. 390, 399 (1923). In 1965, Justice Goldberg, joined by Chief Justice Warren and Justice Brennan, filed a separate opinion in *Griswold* v. *Connecticut,* 381 U.S. 479 (1965) and stated that the Fifth and Fourteenth Amendment expressions of "liberty" protects "those personal rights

that are fundamental and is not confined to the specific terms of the Bill of Rights." *Id.* at 486.

However, the view that a residuum of "fundamental personal rights" not enumerated in the Bill of Rights or elsewhere in the Constitution resides in the Fourteenth Amendment had been articulated long before *Griswold.* In 1883, this Court interpreted the Fourteenth Amendment as possessing guaranties of positive rights and privileges.

> "[The Fourteenth Amendment] . . . nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws. . . . Positive rights and privileges are undoubtedly secured by the Fourteenth Amendment; but they are secured by way of prohibition against State laws and State proceedings affecting those rights and privileges. . . ." *Civil Rights Cases,* 109 U.S. 3, 11 (1883).

The proposition that the Fourteenth Amendment is not limited to protecting only those rights enumerated specifically in the terms of the Bill of Rights recently was reaffirmed by this Court in *Loving* v. *Virginia,* 388 U.S. 1 (1967). In striking down a state miscegenation statute as not only a violation of the Equal Protection Clause but also as a deprivation of "liberty without due process of law," the Court stated in *Loving* that the "freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men." *Id.* at 13. The Court added:

> "Marriage is one of the 'basic civil rights of man' fundamental to our very existence and survival.

> . . . To deny this fundamental freedom on so unsupportable a basis as the racial classification embodied in these [miscegenation] statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the state's citizens of liberty without due process of law." *Ibid.*

It is our contention that the freedom to terminate a marriage relationship is as vital a personal right "essential to the orderly pursuit of happiness" as is the "freedom of choice to marry" enunciated in *Loving*. An arbitrary denial of such a right constitutes an extreme example of injustice that amounts to a serious deprivation of liberty within the meaning of the Due Process Clause. Both marriage and divorce are marked with the public interest. See p. 12, *supra,* and Appendix C *infra.* The fact that states, historically, "favor marriage" and do not favor divorces, *see e.g. Casale* v. *Casale,* 86 A. 2d 568, 138 Conn. 490 (1952), is immaterial when determining the constitutionality of a law or practice that diminishes the right itself.

Denying appellants the opportunity to seek a divorce (a right granted to everyone in the state of Connecticut) because of their inability to pay required fees and court costs is as "subversive of the principle of equality at the heart of the Fourteenth Amendment" as Virginia's invidious racial classification that restricted the freedom of its citizens to marry. Section 52-259 of the Connecticut General Statutes, as applied to the appellants, and Connecticut's refusal to waive other court costs incidental to gaining access to its divorce courts, restricts appellants' freedom to seek a divorce—a deprivation of their liberty without due process of law.

II.

THE EQUAL PROTECTION CLAUSE IS NOT LIMITED IN ITS APPLICATION TO CRIMINAL CASES.

The fundamental right of equal access to the courts for rich and poor alike was established in England more than 750 years ago. The Magna Carta decreed in 1215: "To no one will we sell, to no one will we deny, or delay, right or justice." By 1278, however, England had developed an operative costs system whereby a complainant had to pay for the opportunity to present his grievance to a judge. *See* Maguire, "Poverty and Civil Litigation," 36 *Harv. L. Rev.* 361, 366 (1936).

In order to fulfill the promise of equal justice granted by the Magna Carta, English courts assumed the power to waive costs and fees for paupers absent statutory authorization. Subsequent statutes such as II Hen. VII, c. 12 (1495), 23 Hen. VIII, c. 15 (1531), and Eliz. I, Instruction to Lord President and Council of the North (1603), specifically authorized waiver of costs and fees. *See* Maguire, *supra; Jeffreys* v. *Jeffreys, supra;* Comment, "Procedure: Suits In Forma Pauperis," 6 *Calif. L. Rev.* 226 (1918).

American states adopted the law of England and incorporated the Magna Carta's principle into their constitutions. *See* e.g. Art. I, Sec. 10 of Connecticut's Constitution, *supra.* Parallel to the development of the English system of costs and fees in civil actions, the states adopted their own individual costs and fee systems along with a variety of *in forma pauperis* procedures to provide relief for the poor. *See* e.g. Note, "Discriminations Against the Poor and the Fourteenth Amendment," *supra* at 15.

Frequently the question has arisen in those jurisdictions which do not have paupers' statutes of whether or not courts can grant relief to indigents without specific statutory authorization. Unlike the English courts, some state supreme courts have held that, in the absence of a statutory mandate, they cannot waive costs. [See *Campbell* v. *Chicago & Northwestern Ry.*, 23 Wis. 490 (1868); *In re Karen (Munkelwitz)* v. *Hennepin County Welfare District,* 276 Minn. 554, 150 N.W. 2d 24 (1967).] Many other jurisdictions, however, have recognized an inherent power to waive costs.

In the leading case of *Martin* v. *Superior Court of California,* 176 Cal. 289, 168 Pac. 135 (1917), the plaintiff was permitted to sue *in forma pauperis* for a wrongful death. The California Supreme Court held that the State had adopted the common law of England, including statutes such as II Hen. VII. In so doing, the Court reasoned:

> ". . . the power of the English common-law courts to remit fees on petition *in forma pauperis* did not have its origin in any statute, but was in fact exercised as one of the inherent powers of the courts themselves, quite independently of statute. And this one would naturally expect to find since, imperfect as was the ancient common-law system, harsh as it was in many of its methods and measures, it would strike one with surprise and to be credibly informed that the common-law courts of England shut their doors upon all poor suitors who could not pay fees, until Parliament came to their relief. Even greater would be the reproach to the system of jurisprudence of the State of California if it could be truly declared that in this twentieth century, by its Codes and statutes, it had said the same thing. . . ." *Id.* at 137.

See also Spalding v. *Bainbridge,* 12 R.I. 244 (1879); *M'Clenahan* v. *Thomas,* 6 N.C. (Murph.) 198 (1813); *Hickey* v. *Rhine,* 16 Tex. 576 (1856); *Shearman* v. *Pope,* 106 N.Y. 664, 12 N.E. 713 (1887); *Willis* v. *Willis,* 20 Pa. Dist. 720 (1911).* We contend that Connecticut's state courts have the inherent power to waive costs and fees, and erred by refusing to do so for the appellant.

Nearly all of the high court decisions affording relief from the hardships of indigency concern criminal defendants. In these decisions the constitutional doctrine providing relief from court expenses is based upon the Equal Protection Clause of the Fourteenth Amendment. In a series of cases dealing with the right of access to appellate courts either directly or collaterally to review judgments of conviction, this Court held that the Equal Protection Clause was violated by denial of appeal solely on account of a defendant's inability to pay. *See Griffin* v. *Illinois, Burns* v. *Ohio* and *Eskridge* v. *Washington, supra; Long* v. *District Court of Iowa,* 385 U.S. 192 (1966).

In *Smith* v. *Bennett,* 365 U.S. 708 (1961), the Court found it a denial of equal protection to require that indigent prisoners pay an initial $4.00 filing fees before they could petition for a writ of habeas corpus. This Court rejected the notion that merely because a proceeding is

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* The *Willis* case is an example of the court's use of a constitutional provision similar to Conn. Const. Art. I, Sec. 10, as a basis for waiving court costs:

> "Our state constitution, section 11, art. 1, provides that 'all courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay.' And that 'protects the poor man from having his day in court taken away because of a rule to give security for costs' . . . [citations omitted]." at 721.

called "civil" the protection of the Fourteenth Amendment is not available to prospective indigent litigants. The Court in *Bennett* refused to "quibble" as to whether a habeas corpus proceeding should be termed a civil or criminal action: "The availability of a procedure to regain liberty lost through criminal process cannot be made contingent upon a choice of labels." *Id.* at 712. *See also Barber* v. *Gladden*, 210 Ore. 46, 298 P. 2d 986 (1956).

Yet historically, the Equal Protection Clause has been applied more frequently in civil than in criminal actions. The Fourteenth Amendment is derived from the Civil Rights Act of 1866, now 42 U.S.C. 1981. That statute provides in specific terms for equal access to *civil* courts. *See Jeffreys* v. *Jeffreys, supra.*

In 1885, this Court indicated that the Equal Protection Clause is not limited to criminal cases. *See Barbier* v. *Connolly, supra.* More recently it has applied the *Griffin* principles in the case of *Harper* v. *Virginia State Board of Elections,* 383 U.S. 663 (1966). The Court emphasized that "lines drawn on the basis of wealth or poverty, like those of race . . . are traditionally disfavored" (at 668) in holding that Virginia's poll tax statute violated the Equal Protection Clause. Stating that "lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment," the Court noted that "the affluence of any voter or payment of any fee" constituted such an impermissible line. *Id.* at 665-66.

The recent New York case of *Jeffreys* v. *Jeffreys, supra,* adopted a position similar to that taken by NLADA. That case involved the issue of whether or not statutes requiring payment of publication costs in a

divorce action denied the indigent plaintiff equal protection of the laws.

After discussing the history of *in forma pauperis* proceedings, Judge Nathan Sobel found that courts have an inherent power, derived from common law, to waive costs. He also found that there exists a fundamental right of equal access to the courts and that it is protected by the Fourteenth Amendment. He then cited *Griffin* as the controlling case.

In applying *Griffin's* principles to Mrs. Jeffrey's divorce case, Judge Sobel said:

> "*Griffin* adds a totally new perspective to the traditional concept of equal protection. It differs from earlier cases in that the state statute (or 'state action') did not discriminate on its face; nor did it seek to overclassify or underclassify or classify groups arbitrarily; nor though neutral in formulation, was its *application* by the state wilfully discriminatory. . . .
>
> "Moreover *Griffin* holds that distinctions based on wealth—at least those that discriminate against basic rights of the poor—are assimilated to distinctions based on race and like those will be *presumed* invalid." *Id.* at 84-85.

Judge Sobel went on to hold that New York's publication statutes invidiously discriminate against poor persons in matrimonial actions by denying them equal access to the courts pursuant to the guaranty of the Equal Protection Clause of the Fourteenth Amendment.

Griffin, Harper and *Jeffreys* evidence a balancing approach by the courts—whether the underlying right denied is of such substantial magnitude as to make it unjust and discriminatory for the state to impose a money

hurdle to the exercise of that right—the cost of trial transcript, a $1.50 poll tax, or the $300 cost of publication in a divorce.

It is our contention that the New York Supreme Court has adopted the correct position in divorce actions where indigent plaintiffs cannot pay fees and costs required by state statute. The *Griffin* doctrine should be applied in civil actions. The establishment by the State of Connecticut of civil courts for enforcing claims and vindicating legal rights is fundamental. Like Illinois and New York, Connecticut cannot be allowed to close its court system to persons because of their poverty.

Several Justices of this Court have indicated that they probably would concur with the reasoning of Judge Sobel in *Jeffreys*. In *Williams* v. *Shaffer, supra,* Mr. Justice Douglas, joined by Mr. Justice Brennan and Chief Justice Warren, stated:

> "This case . . . vividly demonstrates the disparity between the access of the affluent to the judicial machinery and that of the poor in violation of the Equal Protection Clause. . . .
>
> "The effect of the security statute is to grant an affluent tenant a hearing and to deny an indigent tenant a hearing. The ability to obtain a hearing is thus made to turn upon the tenant's wealth. On numerous occasions this Court has struck down financial limitations on the ability to obtain judicial review. . . . It is true that these cases have dealt with criminal proceedings. But the Equal Protection Clause of the Fourteenth Amendment is not limited to criminal prosecutions. Its protections extend as well to civil matters. I can see no more justification for denying an indigent a hearing in an eviction proceeding solely because of his poverty than for denying an

indigent . . . the right to obtain a transcript necessary for an appeal."

It is altogether appropriate, then, that this Court now adopt the position of the dissenting Justices in *Williams* v. *Shaffer* with regard to the application of the Equal Protection Clause to civil matters. By doing so, this Court will take a large step toward fulfilling the Magna Carta's ancient promise of equal justice for all people.

III.

FEE REQUIREMENTS IN DIVORCE ACTIONS THAT EFFECTIVELY BAR THE POOR FROM GAINING ACCESS TO A STATE'S DIVORCE COURT SERVE NO GOOD PUBLIC PURPOSE.

A.

Denying Divorce to Poor Persons Contributes to Social Disorganization.

1. Denying Divorce Encourages Informal Marriage Relationships.

A state that effectively precludes its poor citizens from divorce encourages desertion—"the poor man's divorce" —and "other and less formal marital relationships." *See* tenBroek, "California's Dual System of Family Law: Its Origin, Development and Present Status," 17 *Stan. L. Rev.* 614, 617 (1965). If states have an interest in the legality of the marriage relationship and in maintaining the stability of the family unit they do not promote these ends by denying divorces to the poor.

When civil relationships of marriage persist, though in fact the marriage has terminated, and the parties enter into temporary alliances (living together as man and wife with no intention to form a permanent relationship

and to assume permanent responsibilities for a family unit) or common law marriages (openly living together as man and wife without the trappings of the state's consent such as license, solemnization, and authentication) during the legal continuance of the prior marriage, "many concepts dependent upon the legality of the marriage relationship, such as bigamy, adultery, and, in part, legitimacy of offspring, are robbed of much of their traditional content." *See* tenBroek, "California's Dual System of Family Law," *supra* at 617; *see also The Negro Family* 9 (1965) (A Study Prepared by the Office of Policy Planning and Research, United States Department of Labor), where it is noted that in 1963 the non-white illegitimacy ratio in the United States was eight times the white ratio—based upon the number of illegitimate births per thousand. There exists a real danger that making divorce a "luxury" for the poor will help to undermine and eventually destroy the concept of a legal marriage relationship. Desertion, temporary alliance, and common law marriage not only reflect specific family breakdown, but they are the indicia of general social disruption. *See* Foster, "Common Law Divorce," 46 *Minn. L. Rev.* 43, 66 (1961) and Hammer, "Divorce Reform in California: The Governor's Commission on the Family and Beyond," 9 *Santa Clara Lawyer* 32, 55 (1968).

2. Denying Divorce Does Not Promote Family Stability.

By arbitrarily denying their poor the opportunity to obtain a divorce, states do not necessarily promote family stability. Family stability is not advanced by requiring the married parties to remain together under adverse and hostile circumstances. *See* Rheinstein, "The

Law of Divorce and the Problem of Marriage Stability," 9 *Vand. L. Rev.* 633 (1956). A divorce decree is not that event which "turns a woman into an abandoned wife" or suddenly converts a happy stable marriage into a broken home. *Id.* at 647.

"No decree of a divorce court has ever thrown a child into that position in which it is deprived of a home and of the love and care of its two parents. That deprivation is the effect of the factual break-up of the parents' marriage, but not of the decree of the divorce court by which the factual break-up of the marriage may or may not be followed." Rheinstein, "The Law of Divorce and the Problem of Marriage Stability," *supra* at 647. If a state is to effect the desired goal of having the law serve as an adequate substitute for self-help it must "be responsive to the needs of litigants and their families and recognize that no social gain is achieved by denying divorce when a marriage is in fact dead." Foster, "Common Law Divorce," *supra* at 68.

3. Denying Divorce May Have Other Far-reaching Collateral Social and Economic Consequences.

Denying the poor an opportunity to obtain divorce is, in effect, denying them an otherwise lawful and appropriate remedy to their problem. In so acting, states by implication are inviting poor persons either to continue with an intolerable *de jure* marital relationship, or one that is no longer maintained, or to find their own *de facto* remedy. Putting persons in such a dilemma serves no rational social or economic interest of the state. On the other hand, by permitting an unhealthy marital relationship to fester, the state is stoking the fires of family disintegration with potentially grave consequences for society as a whole.

In part, continued family disintegration can be evidenced by an increase in welfare dependency, *see* e.g. *Report of the National Advisory Commission on Civil Disorders* 458 (paperback ed. 1968) (hereinafter referred to as *Commission on Civil Disorders*), and juvenile delinquency, and, to a lesser degree, in the high incidence of mental illness and alcoholism among the poor. *See* Weihofen, "Mental Health Services for the Poor," *The Law of the Poor*, 596 (1966), and "Alcohol Project of the Emory University Department of Psychiatry," presented in the *President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Drunkenness*, 82 (Appendix G) (1967). The effect upon society of family breakdown might best be illustrated by looking at the mushrooming AFDC (Aid to Families with Dependent Children) Program and the root causes for juvenile delinquency.

The AFDC Program was first established in 1935 to care for widows and orphans, although the legislation contemplated coverage for all children in homes deprived of parental support because one or both of the parents were absent or incapacitated. *See The Negro Family, supra* at 12. But, "in fiscal year 1967, the total annual cost of the AFDC program, including federal, state and local contributions, was approximately $2.0 billion." See *Commission on Civil Disorder, supra* at 458.

At first, the number of AFDC families in which the father was absent because of desertion was less than a third of the total; however by 1960, it was two-thirds. The Department of Health, Education and Welfare estimated that between two-thirds and three-fifths of the 50 per cent increase between 1940 and 1955 in the number of absent-father families receiving aid for dependent children could be explained by an increase in broken

homes in the population. *See The Negro Family, supra* at 12. A 1962 California study of the AFDC Program indicated that

> "of a total of some 86,000 families receiving AFDC, some 77,000 were cases in which the father was absent from the home . . . of the total of 249,000 children receiving AFDC, 37.2%, 85,000 were born to parents never married to each other. Thus roughly 18,000 of the 77,000 absent-father families consisted of families in which divorces, annulments, and legal separations according to the forms of civil law had occurred. In all of the other families some essential civil law step was missing: the parents were never married to each other; there was a separation without a court decree; or there was desertion." *See* ten-Broek, "California's Dual System of Family Law," *supra* at 618.

Many studies have documented the effect of a broken home, or the personality effects of being raised in a disorganized home, upon delinquency. *See* e.g. Craig and Glick, "Ten Years Experience With the Glueck Social Prediction Table," 9 *Crime and Delinquency* 249, 256 (1963) and Scarpitti, Murray, Dinitz and Reckless, "The 'Good Boy' in a High Delinquency Area: Four Years Later," 25 *American Sociological Rev.* 555 (1960). Generally, the studies show that a higher portion of delinquent than non-delinquent children come from broken homes and that "good boys" in high delinquency neighborhoods typically come from exceptionally stable, intact families. *See Scarpitti, et al., supra* at 555-558.

It is clear that one cannot fully understand the causes for juvenile delinquency without first understanding the effect of family stability upon children. For example, in evaluating the effect of a broken home on a child, it has been noted that

"it is not so much the physical break in the home as the child's reaction to it that is important. The break itself may solve as much of the problem as it creates. A complete home that is marked by dissension may be psychologically and socially more broken than a physically broken one in which the remaining members of the family carry on as a close family unit." Barron, *The Juvenile Delinquent in Society* 138 (1960).

B.

Sound Public Policy Supports the Right of the Poor to Access to a State's Divorce Courts.

At a time when our nation appears preoccupied with combating violence and disrespect for the law by providing more effective legal assistance for the poor and more effective grievance-response devices to involve the poor in the decision-making process, denying the poor access to a state's civil courts is an anomaly. The National Advisory Commission on Civil Disorders cautioned against denying a class of citizens an opportunity to vindicate their legal rights in courts of law. See *Commission on Civil Disorders*, *supra* at 291-293. In addition, this Court has noted that,

". . . [u]nder the conditions of modern government, litigation may be the sole practicable avenue open to a minority to petition for redress of grievances." *NAACP* v. *Button*, 371 U.S. 415, 430 (1963).

Statutes, like Conn. Gen. Stat. Ann. Sec. 52-259, *supra*, that refuse to waive fees and other court costs effectively bar poor persons from the courts and the legal process. It is a self-defeating proposition for states to profess equality for all citizens but to deny the poor those fundamental rights that persons with money can enjoy.

CONCLUSION.

For the reasons stated, we respectfully submit that the judgment of the United States District Court for the District of Connecticut be reversed.

Respectfully submitted,

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APPENDIX A

PROVISIONS FOR IN FORMA PAUPERIS PROCEEDINGS*

(Note: URESA means Uniform Reciprocal Enforcement of Support Act)

Alabama

No provision for waiver of costs for poor persons except for discretionary waiver of costs under URESA. *Ala. Code* tit. 34, § 119(b).

Alaska

Superior court may authorize appeal by poor person without payment of costs or giving of security. Trial court may waive payment of fees under URESA. Alaska Supreme Ct. Rule 43; Rules of Administration, Rule 15(b).

Arizona

Ordinarily a defendant may ask the court to order the plaintiff to give security for costs. Rule provides that if the plaintiff is a resident of Arizona and attests to his inability to give security, the court may vacate the order to give security. Statute allows extension of time for payment of court fees. Also discretionary waiver under URESA. *Ariz. Rev. Stat.* §§12-302, 12-1665; *Rules of Civil Procedure,* Rule 67(e). [$20 filing fee. No *in forma pauperis statute.*]

Arkansas

Statute provides for waiver of costs for poor plaintiff defined as person not worth $10 over and above neces-

* The material supplied in brackets was obtained from a questionnaire sent out to NLADA's member civil offices.

sary wearing apparel for self and family and excepting subject matter of action. Lawyer must make affidavit that plaintiff has a good cause of action. In URESA cases, waiver of fees is mandatory. *Ark. Stat. Ann.* §§27-401 to 406; 34-2415.

California

Right to proceed *in forma pauperis* recognized by judicial decision in absence of statute, applicable in superior and justice courts. For appeals, however, there is no procedure for waiver of clerk's and reporter's fees. Under URESA, waiver of fees is mandatory. *Civ. Pro. Code* §1677; Rules of Court for Appeals, Rules 4(c), 5(c); *Martin* v. *Superior Court*, 176 Cal. 289, 168 Pac. 135, (1917). [$27-35 filing fees and fees for service.]

Colorado

Statute allows poor person, as determined by judge, to sue or defend without payment of fees in any court in any civil action or special proceeding. Under URESA waiver of fees is mandatory. *Colo. Rev. Stat. Ann.* §§ 33-1-3, 43-2-15, 46-1-9. [$27 filing fee. For divorce cases *in forma pauperis* proceedings are for women only.]

Connecticut

Waiver of fees discretionary under URESA. *Conn. Gen. Stat. Ann.* §17-338. [$60.00 filing fee.]

Delaware

No general statute or case law authorizing proceedings *in forma pauperis*, but a special statute so provides as to appeals from a court order relating to custody of a child. No waiver of fees under URESA. *Del. Code Ann.*, tit. 10, §989.

District of Columbia

Statute authorized any United States citizen to sue or defend *in forma pauperis*. Court determines eligibility. Under URESA waiver of fees is discretionary. *D. C. Code Ann.* §§15.701, 15.703-704, 15.709-710, 15.712.

Florida

Statute allows actions *in forma pauperis* and appeals upon filing of affidavit of plaintiff and certificate of attorney as to good faith of claim. Under URESA waiver of fees is mandatory. *Fla. Stat. Ann.* §§57.081, 88.151.

Georgia

Statute authorizes any party in a civil action before superior court or lower courts to submit affidavit of inability to pay fees. Divorce actions are excluded. Separate statutes and rules of court provide for waiver of costs for appeals and mandamus proceedings. Under URESA waiver of fees is discretionary. *Ga. Code Ann.* §§24-3413, 24-3622, 24-3637, 24-4521, 6-203, 99-914a.

Hawaii

Statute provides in district court for waiver of costs in actions for $25 or less. No provisions for actions in court of general jurisdiction. Under URESA waiver of fees is discretionary. *Hawaii Rev. Stat.* §§229-8 to 11, 329-27; 607-3, 607-15, 607-23.

Idaho

Discretionary waiver of fees under URESA. *Idaho Code Ann.* §7-1062.

Illinois

Statute authorizes waiver of filing fee and sheriff's fees in all courts for plaintiffs and defendants. *Ill. Rev. Stat.* ch. 33, §5. [$35.50 filing fee. Incomplete *in forma pauperis* for divorce; must pay before final decree.]

Indiana

Statutes permit waiver of filing fee and other fees for plaintiff or defendant in superior circuit and probate courts. Separate provision excuses poor plaintiff from giving security for costs. Waiver of fees is mandatory under URESA. *Ind. Ann. Stat.* §§2-211, 2-212, 49-1305B, 3-3115.

Iowa

Discretionary waiver of fees under URESA. *Iowa Code Ann.* §252 A. 10 §§605.19, 605.23. [No state-wide *in forma pauperis*. Iowa City and Dubuque have such provisions. Waterloo does not. $15-30 for filing and service.]

Kansas

Statute allows poor person, by filing poverty affidavit and asserting that his claim is just, to be excused from making deposit as security for costs. Under URESA waiver of fees is mandatory. *Kan. Stat. Ann.* §60-1002; 23-432. §60-2001(a)-(b).

Kentucky

Statute authorizes court to allow a Kentucky resident to prosecute or defend without payment of fees to court officials. In URESA cases waiver of fees is discretionary. *Ky. Rev. Stat. Ann.* §§453.190, 407.220. [$25 filing fee. Court clerks balk at *in forma pauperis* because the state makes no provision to pay them.]

Louisiana

Statute authorizes any poor person to sue or defend without payment of fees in any civil action except divorce and separation. He must file an affidavit of poverty and a confirming affidavit of a second person. A poor person has the right to appeal without costs or furnishing appeal bond. Under URESA waiver of fees is discretionary. *La. Rev. Stat.* §13:1673. [$25 filing fee.]

Maine

Discretionary waiver of fees under URESA. *Me. Rev. Stat. Ann.*, tit. 19, §398.

Maryland

Discretionary waiver of fees under URESA. *Md. Ann. Code* Art. 89C, §§11(b), 11(c), 15.

Massachusetts

No provision for proceedings *in forma pauperis*, except under URESA. In such actions plaintiff must allege, inter alia, that her total assets do not exceed $100 apart from clothes, household goods, and tools of trade. No waiver of fees required by responding state. *Mass. Ann. Laws* ch. 273A, §15. [$15 filing fee and $10 service fee or $25 publication.]

Michigan

Ordinarily, plaintiff in any civil action may be required to give bond for costs in trial court or in both trial and appellate courts. However, a plaintiff who shows by affidavit that he cannot afford to make bond and whose complaint states a meritorious claim may be allowed to proceed without giving bond. Under URESA waiver of fees is discretionary. Gen. Ct. Rule 109(1).

Separate provision authorizes a poor person to obtain a stay of proceedings without giving bond. Separate statute authorizes judge to excuse security for costs in any claim for labor done. *Mich. Stat. Ann.* §27A.2605, §27A.-6703. [$32-43 fees.]

Minnesota

No general provision for proceedings *in forma pauperis*. Usually non-residents are required to post $75 bond for costs in district court, but by statute this does not apply in actions to recover wages or other claims for personal services. Under URESA waiver of fees is discretionary. *Minn. Stat. Ann.* §§549.18, 518.49.

Mississippi

Statute excuses poor plaintiffs who are state citizens from paying court costs or giving security for costs. Under URESA waiver of costs is discretionary. *Miss. Code Ann.* §§1574-1576, 456-14. [$5 filing fee.]

Missouri

Statute authorizes plaintiffs to sue in circuit court without payment of fees, taxes or charges. Separate pro-

vision for magistrates' courts authorizes magistrate to waive requirement of security for costs if he finds plaintiff is a poor person. Under URESA waiver of fees is mandatory. *Mo. Ann. Stat.* §§514.040, 514.050, 514.360; 454.150.

Montana

Statute authorizes poor plaintiff to sue in any civil court without paying costs or giving security. Under URESA plaintiff must pay usual filing fee of $5, but all other fees may be excused unless court finds that complaint was filed in bad faith. *Mont. Rev. Codes Ann.* §§93-8625, 93-2601-17, 21-148. [A poor woman may sue for divorce without costs upon taking a pauper's oath.]

Nebraska

Waiver of fees is discretionary under URESA. *Neb. Rev. Stat.* §26-113.

Nevada

Waiver of fees is discretionary under URESA. *Nev. Rev. Stat.* §§12.0-15, 65.040. [*In forma pauperis* exists but has not been tested.]

New Hampshire

Waiver of fees is mandatory in URESA cases. *N.H. Rev. Stat. Ann.* §546:15, 546:11, 546:14. [$150 down payment toward $250-$300 fee. Costs may be waived.]

New Jersey

Costs may be disallowed in the discretion of the court to any party in any action or proceeding. N.J.S.A. 2A:15-59. [$35 filing fee. Representation by a legal aid attorney automatically waives fees.]

New Mexico

Statute provides waiver of court costs upon filing affidavit of poverty. Separate statute allows poor plaintiff or defendant a free jury trial. In URESA cases waiver of fees is discretionary. *Stat. Ann.* §§25-1-4, 21-8-17, 22-19-14.

New York

Statute authorizes any poor litigant to sue or defend in trial or appellate court upon motion supported by affidavit of poverty. Separate statute for justice court authorizes waiver of costs for poor plaintiff who states that he is not worth more than $100 besides wearing apparel and furniture necessary for himself and family. Under Uniform Support of Dependents Law, county pays for stenographic services and certification of records. Civil Practice Law & Rules §§1101 to 1103; Justice Court Act §§ 37 to 43; Domestic Relations Law § 40. [New York City: $5 filing fee, $25 calendar fee.]

North Carolina

Statute authorizes judge or clerk of superior court to permit a person to sue "as a pauper" when he proves by one or more witnesses that he has a good cause of action and makes affidavit that he cannot afford the $200 security bond or cash deposit required in all civil cases. Separate provision authorizes a pauper's appeal. *N.C. Gen. Stat.* §§1-110, 1-112, 1-288, 6-24, 52A-11.1. *M'Clenahan* v. *Thomas*, 6 N.C. 198 (1813).

North Dakota

Under URESA waiver of fees is discretionary.

Ohio

Statutes permit clerk to excuse poor persons from depositing cash or security for costs. Statute covers only security for costs or prepayment of costs, however, and in practice the costs must be paid before a judgment can be entered. Under URESA waiver of fees is discretionary. *Ohio Rev. Code Ann.* §§2323.30, 2323.31, 3115.16. [$7 court costs, $5-$50 filing fees; $100 minimum retainer.]

Oklahoma

Statute provides that no bond, security, or cash deposit shall be required of a plaintiff who makes affidavit that he has a just cause of action and is unable to pay

expense of bond. Under URESA waiver of fees is mandatory. *Okla. Stat. Ann.*, tit. 12, §§921, 1600.15. [Minimum court deposits $15-$28.]

Oregon

Statute allows a plaintiff or appellant to file a pauper's affidavit and be excused from payment of trial fee in trial or appellate court. Statute does not apply to sheriff's fee, library fee, reporter's fee, etc. Under URESA local fees are waived but those of responding state are not. *Ore. Rev. Stat.* §§21.600(2), 110.141. [$40 filing and service fees. Complete *in forma pauperis* statute effective August 23, 1969.]

Pennsylvania

Under URESA waiver of fees is mandatory. Superior Court permits appellant to appeal *in forma pauperis* upon filing of sworn financial statement showing income and ownership of property. *Pa. Stat.* tit. 62, §2043.15; Superior Court Rule 51. [95% of all court costs in the State must be deposited. Johnstown, Pa.—$155.50—no pauperis provision. Pittsburgh—$80-125—no provisions. Lancaster—*In forma pauperis* in statute only. The courts have refused to allow it. Philadelphia—allowed on a case by case basis.]

Puerto Rico

Statute permits resident plaintiff and any defendant to be excused from paying fees in any civil action. Separate statute provides for typewritten copy of record without costs. Discretionary waiver of fees under URESA. *P.R. Laws Ann.* tit. 32, §§1482, 1489, 3313g.

Rhode Island

Right to proceed *in forma pauperis* recognized by judicial decision in absence of statute. Costs are waived upon a showing by plaintiff that he is poor and that he has a probable cause of action. Const., Art. 1, §5; *Spalding* v. *Bainbridge*, 12 R.I. 244 (1879).

Statute provides that clients of Legal Aid Society shall not be required to pay any fees to the superior or district courts for services of clerks or sheriffs. No specific waiver of fees under URESA. *R.I. Gen. Laws Ann.* §9-29-14.

South Carolina

Statute, applicable only to two counties, authorizes plaintiff to sue with remission of court costs in any civil action. Under URESA fees may be waived in all counties. *S.C. Code Ann.* §10-604.

South Dakota

No general provision for proceeding *in forma pauperis*. A special statute authorizes such a proceeding upon application for writ of habeas corpus. Under URESA waiver of fees is discretionary. *S.D. Code* §§37.5504-1, 14-0815.

Tennessee

Statute authorizes *in forma pauperis* proceeding by resident plaintiff, excepting absolute divorce, false imprisonment, slander, or malicious prosecution. In an absolute divorce case, clerk may accept $10 deposit in lieu of security for costs if plaintiff is a woman. Separate provisions for actions *in forma pauperis* on behalf of infants, incompetents, and decedents' estates. Under URESA waiver of fees is mandatory. *Tenn. Code Ann.* §§20-1629 to 1635; 29-201, 36-914. [$12 filing fee for wife—$27 filing fee for husband.]

Texas

Statutes and rules authorize poor person to sue or defend without paying usual fees or giving security for costs in various courts. Under URESA waiver of fees is discretionary. *Tex. Civil Stats.*, Arts. 1917, 1958, §2328b-3; subsecs. 8, 15; Rules of Civil Procedure, 145, 217, 334, 355, 380, 444, 485, 508, 572.

United States

Statute authorizes any United States court to waive fees for poor persons in trial court or on appeal.

Separate statute authorizes furnishing of stenographic transcript for appeal "if the trial judge or a circuit judge certifies that the appeal is not frivolous but presents a substantial question." 28 U.S.C. 1915, 1916.

Utah

Statute authorizes proceedings *in forma pauperis* by plaintiff or defendant in all courts. He must file affidavit showing poverty and that he believes he has a good claim or defense. Under URESA waiver of fees is mandatory. *Utah Code Ann.* §§21-7-3 to 21-7-7, 77-61a-15.

Vermont

Waiver of fees under URESA is discretionary. *Vt. Stat. Ann.*, tit. 15, §258.

Virginia

Statute authorizes court to permit any poor person to sue or defend a suit without paying fees or costs. No specific provision for waiver of fees under URESA. *Va. Code Ann.* §14.1-183.

Washington

Waiver of fees under URESA is mandatory. *Wash. Rev. Code Ann.* §26.21.102. [$16 filing fee; $250 minimum bar fee.]

West Virginia

Statute permits plaintiff or defendant to sue or defend without payment of fees upon filing affidavit of poverty. Separate statute permits waiver of costs in trial or appellate court if party files a statement of poverty with certification by chief executive officer of a legal aid society. No provision for waiver of costs under URESA. *W.Va. Code Ann.* §§59-2-1, 59-1-36.

Wisconsin

Statute authorizes any party, upon filing affidavit of poverty, to be excused from giving security for costs in trial or appellate court. Affidavit must also allege that claim or defense is well founded and briefly describe claim or defense. Under URESA waiver of fees is discretionary. *Wis. Stat. Ann.* §§271.29, 52.10(14). [$7 state suit tax and county filing fee.]

Wyoming

No filing fee required under URESA and other fees may be waived. *Wyo. Stat. Ann.* § 20.91 [$5 filing fee.]

APPENDIX B

CASELOAD STATISTICS*

January 1 — June 30, 1969

State and City	Total New	Total Divorce	Percentage
Arizona			
Florence	329	50	15.1
Phoenix	1454	297	20.4
Tucson	1187	217	18.2
Arkansas			
Little Rock	281	94	33.4
Newport	71	14	19.7
California			
Fresno	541	85	15.7
Los Angeles, L.A.S.	1990	540	27.1
Napa	272	59	21.6
Pasadena	448	161	35.9
Redwood City	915	203	22.1
Sacramento	1088	185	17.0
San Francisco L.A.	3399	474	13.9
San Francisco L.A.S.	2514	373	14.8
San Jose	1575	331	21.0
Stockton	1131	400	35.3

* This data was gathered from the official reports of NLADA's member civil offices. The figures represent essentially the total number of new civil actions because personnel in a legal services program may not represent any person indicted (or proceeded against by information) for the commission of a crime. See Sec. 222(a)(3), Economic Opportunity Act.

State and City	Total New	Total Divorce	Percentage
Colorado			
Colorado Springs	345	75	21.7
Denver	2086	652	31.2
Pueblo	419	77	18.3
Connecticut			
Middleton	126	35	27.7
Norwich	343	82	23.9
Willimantic	304	96	31.5
Florida			
Jacksonville	834	236	28.2
Miami	733	184	25.1
Tampa	225	2	.8
Georgia			
Atlanta	3822	577	15.0
Savannah	128	0	0
Hawaii			
Honolulu	804	213	26.4
Idaho			
Lewiston	134	51	38.0
Illinois			
E. St. Louis	437	142	32.4
Peoria	428	178	41.3
Indiana			
Fort Wayne	226	18	7.9
Gary	593	178	30.0
Iowa			
Dubuque	113	30	26.5
Iowa City	257	34	9.5
Waterloo	392	79	20.1
Kansas			
Kansas City	395	74	18.7

State and City	Total New	Total Divorce	Percentage
Louisiana			
Alexandria	318	46	14.4
Baton Rouge	372	84	22.5
Tallulah	67	14	20.8
Michigan			
Battle Creek	368	94	25.5
Bay City	239	59	24.6
Benton Harbor	186	63	33.8
Eloise	410	160	39.0
Escanaba	515	91	17.6
Grand Rapids	1012	274	27.0
Lansing	314	105	33.4
Mt. Clemens	668	146	21.8
Saginaw	8	2	25.0
Minnesota			
St. Paul	837	283	33.8
Mississippi			
Clarksdale	184	8	4.3
Missouri			
St. Louis	1426	276	19.3
Montana			
Helena	1759	351	19.9
Nebraska			
Omaha	462	154	33.3
Nevada			
Las Vegas	253	3	1.1
Reno	73	2	2.7
New Hampshire			
Littleton	358	97	27.0

State and City	Total New	Total Divorce	Percentage
New Jersey			
Camden	866	114	13.1
Elizabeth	456	101	22.1
New Brunswick	1016	230	22.6
New Mexico			
Albuquerque	823	186	22.7
Bernalillo	129	16	12.4
New York			
Binghamton	229	106	46.2
New York City	191	37	19.3
Niagara Falls	603	228	37.8
Utica	468	97	20.7
North Carolina			
Charlotte	450	66	14.6
Winston-Salem	335	58	17.3
Ohio			
Canton	361	137	37.9
Cincinnati	2652	594	22.3
Columbus	1534	216	14.0
Portsmouth	205	71	34.6
Toledo	669	156	23.3
Oklahoma			
Jay	252	61	24.2
Oregon			
Eugene	227	63	27.7
Portland	1372	405	29.5
Pennsylvania			
Chester	657	—	—
Johnstown	176	14	7.9
Washington	84	11	13.0
Puerto Rico	4322	657	15.2

State and City	Total New	Total Divorce	Percentage
South Carolina			
Greenville	367	59	16.0
Tennessee			
Knoxville	314	128	40.7
Texas			
Austin	598	129	21.5
Corpus Christi	538	48	8.9
Dallas	1004	356	35.4
Houston	1225	530	43.2
San Antonio	1456	413	28.3
Waco	331	47	14.1
Utah			
Ogden	398	123	30.9
Virginia			
Roanoke	235	52	22.1
Washington			
Seattle	208	38	18.2
Wyoming			
Cheyenne	126	22	17.4

APPENDIX C

THE INTEREST OF SELECTED STATES IN DIVORCE PROCEEDINGS

"Marriage . . . is regulated . . . and can be dissolved only through the sovereign power of the state, whenever justice to either or both parties or the welfare of the public demands it." Arizona: *Forsythe* v. *Paschal*, 271 P. 865, 866 (1920).

"The Legislature . . . determines the grounds for, and the defenses against, divorce; because divorce is always regulated by statute." Arkansas: *Young* v. *Young*, 178 S.W. 2d 994, 997 (1944).

"The State, while not a party in a divorce action, has an interest in the contract and relationship of marriage, which is not subject to dissolution upon the whim or caprice of one of the contracting parties or even upon their mutual consent. It may be dissolved only for causes sanctioned by law." California: *Ex parte Lazar*, 99 P. 2d 342, 343 (1940).

"It is true that the state has an interest in every action where a divorce is sought to make sure that the attempt will not prevail without sufficient and lawful cause, shown by the facts of the case. [Citations omitted]" Connecticut: *Barton* v. *Barton*, 196 A. 141, 144 (1937).

"In the interest of public welfare, the state becomes a third party to any divorce proceeding." Florida: *Wall* v. *Wall*, 134 So. 2d 288, 289 (1961).

Georgia: "EX PARTE CASES, DUTY OF JUDGES IN.—In divorce cases proceeding undefended by the opposite party the judge shall see that the grounds are legal and sustained by proof, or shall appoint the solicitor general or some other attorney of the court to discharge that duty for him." Ga. Code Ann. §30-129.

"The State, as the sovereign, has an interest in maintaining the integrity and permanency of the marriage relation . . . In all divorce suits the public occupies the position of a third party." Illinois: *Ollman* v. *Ollman*, 71 N.E. 2d 50, 53 (1947).

Indiana: "WHEN PROSECUTOR TO RESIST.—Whenever a petition for divorce remains undefended, it shall be the duty of the proper circuit or district prosecuting attorney to appear and resist such petition." Ind. Stat. Ann. §3-1212.

"The integrity and permanence of the marital relation is of such vital importance to the welfare of society and to the public generally that the sovereignty or State has always deeply interested itself in all matters pertaining to the dissolution of that relation. While the suit for divorce is nominally between the two parties, the State is always a quasi party." Iowa: *Hopping* v. *Hopping*, 10 N.W. 2d 87, 89-90 (1943).

"The right to apply for or obtain a divorce is not a natural right, but one conferred only by statute." Louisiana: *Stallings* v. *Stallings*, 148 So. 687, 689 (1933).

"The State is a party to every divorce action and has a well defined interest in the continuance of the marriage relationship on the grounds of public policy. Public policy should be and is one of the prime considerations in considering all procedures relating to divorce and is of extreme importance in its application to all aspects of actions of divorce." Maine: *Deblois* v. *Deblois*, 177 A. 2d 199, 202 (1962).

"It is recognized that the marriage relation is a status based upon public necessity and controlled by law for the benefit of society. Although a divorce proceeding appears as a controversy between husband and wife, the State occupies the position of a third party to the contract, and it is always the duty of the courts to guard the marriage relation." Maryland: *Lickle* v. *Boone*, 51 A. 2d 162, 164 (1947).

"The state is a party to every divorce proceeding, and it alone, speaking through its courts, determines what, if any, relief shall be given." Michigan: *Kelly* v. *Kelly*, 233 N.W. 170, 171 (1930).

"It is important to society, as represented by the state, that the marital status be preserved and the rights of children protected. Therefore the state is an interested party in a divorce action.

"The proper regulation and control of the marriage relation is of so much importance to society, the well being of the community is so far involved in the permanence of this relation, that the state, through its courts, *exercises a peculiar guardianship over marriage and divorce.*" Minnesota: *Cahaley* v. *Cahaley*, 12 N.W. 2d 182, 184 (1943).

"Society, represented by the state, has an interest in every marriage and is a party to every action for divorce." Missouri: *Wagner* v. *Shelly*, 235 S.W. 2d 414, 417 (1950).

". . . the state never stands indifferent, but is always a party [in an action dissolving marriage] whose interest must be taken into account." Nebraska: *Willits* v. *Willits*, 107 N.W. 379, 380 (1906).

"It is indisputably the law here that the power of the Court to decree a divorce is entirely statutory." New Hampshire: *Rockwood* v. *Rockwood*, 194 A. 2d 771, 772 (1963).

". . . in divorce cases the state is a party whose interest the court at all times will save and protect . . . And as the law favors marriage and disfavors divorce, the court will do nothing to facilitate the latter, but will only dissolve the marriage relation where the complaining party is strictly entitled to a decree." New Jersey: *Rinehart* v. *Rinehart*, 110 A. 29, 30 (1920).

"The right to obtain a divorce is not a natural one but is accorded only by reason of statute, and the state has a right to determine who are entitled to use its courts for that purpose and upon what conditions they may do so." New Mexico: *Chaney* v. *Chaney*, 201 P. 2d 782, 784 (1949).

". . . there is no common law of divorce in New York state. Divorce law in New York is wholly statutory." New York: *Borenstein* v. *Borenstein*, 270 N.Y.S. 688, 689-690 (1934).

"Because of the interest of the State in the continuance of the marriage relation, our statutes require that, even though the defendant should default, there must be an actual trial of every divorce action. . . ." North Dakota: *Schillerstrom* v. *Schillerstrom*, 32 N.W. 2d 106, 109 (1948).

". . . a divorce proceeding is sui generis, and necessarily triangular in its nature, consisting of the plaintiff, the defendant, and the state . . . Although not named in the pleadings in the first instance, the state, or the public, is interested in the result . . . and [this policy] is on the theory that, as citizens of the state, the children and relatives of the parties have an interest in the proceedings; and, since they cannot become parties to the suit, it is essential that their interests be represented by the court." Oregon: *Parrish* v. *Parrish*, 96 P. 1066, 1067 (1908).

"An action in divorce is of such a character that the Commonwealth is an interested party to the extent that the morals of the community be safeguarded and justice be granted to each of the contending parties and their children, if there be children of the marriage." Pennsylvania: *Krammas* v. *Krammas*, 8 Sch. Reg. 171 (1941).

"Whether a decree of divorce will be pronounced . . . involves an exercise of some discretion on the part of the judge or chancellor, effected in some measure by considerations of public policy." Tennessee: *Parks* v. *Parks*, 11 S.W. 2d 680, 682 (1928).

"By the laws of Texas, marriage is a civil contract . . . The statutes prescribe the grounds upon which that contract may be dissolved." Texas: *Wilemon* v. *Wilemon*, 250 S.W. 1010, 1012 (1923).

"It is elementary, of course, that neither courts of law or equity have any inherent power to dissolve marriage. The power to decree a divorce is absolutely statutory." Virginia: *Blankenship* v. *Blankenship*, 100 S.E. 538, 539 (1919).

"Statutory recognition that the state is an interested party in every divorce suit is provided by RCW 26.08.080. . . ." Washington: *Chamberlin* v. *Chamberlin*, 270 P. 2d 464, 472 (1954).

"The courts of equity have jurisdiction to entertain divorce cases only by reason of the statute conferring that jurisdiction . . . and it is well within legislative power to throw strict safeguards around judicial severance of the marriage contract. . . ." West Virginia: *Parks* v. *Parks*, 153 S.E. 242, 243 (1930).

"That the dissolution of the marriage by divorce is a matter wherein public interest as well as the particular private interests of the immediate parties are concerned is a firmly established doctrine." Wisconsin: *Weichers* v. *Weichers*, 221 N.W. 733, 734 (1928).

"It is elementary that the statutory grounds of divorce are exclusive, the courts having authority in this field to do that only which is prescribed by the legislature." Wyoming: *Logan* v. *Logan*, 396 P. 2d 198, 199 (1964).